FOR ARGUMENT

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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1975

No. 75-567 and 75-577
(Consolidated)

STATE OF OREGON, Acting by and through the State Land Board,

Petitioner and Respondent

Versus

CORVALLIS SAND AND GRAVEL COMPANY, an Oregon corporation,

Respondent and Petitioner

ON WRIT OF CERTIORARI to the Supreme Court of the State of Oregon

---

BRIEF FOR AMICI CURIAE

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INTEREST OF AMICI CURIAE

This case involves a title controversy between the State of Oregon and Corvallis Sand and Gravel Company (Corvallis), a riparian landowner, both claiming title to lands presently below the high water mark of the Willamette River. Some of these tracts are between ordinary high water and ordinary low water, and some of the tracts are below the

ordinary low water line. The litigation includes questions as to whether changes in the course of the river have been wrought by erosion or avulsion and as to the effect of the joining, by the process of accretion, of Avery Bar to the riparian uplands, Avery Bar having originated as an island in the bed of the river. The Oregon courts have adhered to the view that the rights of the State (and the conflicting rights of the riparian owner) in and to lands underlying navigable waters and lands emerging therefrom depend upon the construction of the grant of the navigable water bottoms to the State under the equal-footing doctrine, embodied in the admitting statute, and also under the Submerged Lands Act, and therefore are governed by Federal common law. This, of course, is in conformity with the holding of the United States Supreme Court in *State of Arizona v. Bonelli*, 414 U.S. 313 (1973).

Both litigants, Oregon and Corvallis, agree that this case requires the interpretation of the equal-footing doctrine with respect to the nature and extent of the navigable water bottom title granted to the State in the admitting statute. However, California and several other states (California, et al), as amici curiae, argue, contradictorily to both of the actual litigants, that the equal footing doctrine is not involved in the controversy and requires no interpretation herein, that the federal common law is not applicable to the controversy, and that *Bonelli* was in error in holding that the lands (in *Bonelli* the lands had emerged above present high water of the Colorado River through the channelization thereof) were *not* lands "...the title to which is vested in the State as a matter of federal settled law..." and that "...the question of title as between the State and a private landowner necessarily depends on a construction of a 'right asserted under federal law'." 1/ California, et al, would have this Court overrule *Bonelli* and dismiss the writs of certiorari previously granted herein (to both litigants) and

1/ 414 U.S. 320, 321

hold that the requisite federal question, for the purpose of this Court's appellate jurisdiction, does not exist.

The present amici curiae (present amici) represent numerous parties owning lands, in states other than Oregon, fronting on navigable water bodies; large tracts of such lands are located in the Atchafalaya Basin in the State of Louisiana. Present amici are at this time engaged in litigation asserting their said clients' respective titles to accretions to their riparian lands, and to a substantial degree present amici depend upon the equal footing doctrine, as interpreted in *Bonelli*, and upon the federal common law, as reiterated in *Bonelli*, for the protection of the titles of their said clients. It is important to present amici that this Court, in the instant proceedings, adhere to the principles of *Bonelli* and deny the request of California, et al to "return this case to the Oregon Supreme Court relieved of that precedent (*Bonelli*) for a new decision ..." 2/

2/ Brief of California, et al, p. 33.

ARGUMENT

I.

CALIFORNIA, ET AL, IN THEIR ROLES AS AMICI CURIAE, SHOULD NOT BE ALLOWED TO CHANGE THE ISSUES FRAMED BY THE LITIGANTS

Oregon here takes the position affirmatively that the equal footing doctrine is "involved" and requires interpretation in the instant case. [3/] Oregon would have such doctrine interpreted as allowing the State's ownership of its navigable water bottoms to follow the river in all of its course changes, independent of the character of the changes in the river as sudden or imperceptible. [4/] This is the only change requested by Oregon in the principles announced in *Bonelli*, and particularly Oregon does not quarrel with the Bonelli holding that the emerged lands are owned by the riparian owner;[5/] further, Oregon would have the court limit avulsions "...to the rare and cataclysmic events that they are supposed to be."[6/]

Corvallis also recognizes that the equal footing doctrine and its interpretation form the core of the instant case.[7/] Corvallis would have this court hold that the grant of navigable water bottoms to the states pursuant to the equal footing doctrine was limited to tidal waters and did not include fresh water streams, such as the Willamette River, and that, in any event, such grant included only water bottoms as they existed (i.e., covered by water) on the date of the admission of the State into the Union, including such additions to the bed as may be caused gradually and

3/ See pages 2 and 3 of Oregon's brief in No. 75-567 and p. 2 of Oregon's brief in No. 75-577.

4/ See p. 18 of Oregon's brief in No. 75-567.

5/ See Footnote 6, p. 19 of Oregon's brief in No. 75-567.

6/ See p. 27 of Oregon's brief in No. 75-567.

7/ See pp. 26 and 27 of Corvallis' brief in No. 75-577.

imperceptibly by erosion, but affirmatively excluding the bottom of any channel or stream-diversion caused after the inception of statehood through the process of avulsion.

Although the above review of the issues, as they were framed by the litigants themselves, with respect to the equal footing doctrine, may be too restrictive, we respectfully submit that they present in fair capsule form the legal questions which are the nub of this lawsuit. The evidence adduced and arguments presented to the State courts, as well as the written reasons for judgment handed down by State courts, address themselves to these issues. And now California, et al as amici curiae, attempt to change these issues and to assure this Court that the equal footing doctrine is not involved here and that the litigants, both of which have petitioned for and been granted writs of certiorari, have not established a basis for the jurisdiction of this Court. [8/] We respectfully submit that California, et al should not be allowed to change in any manner, and particularly not in the radical manner attempted here, the issues framed by the parties and litigated in the state courts. *Corpus Juris Secundum*, Verbo AMICUS CURIAE, Vol. 3A, Sec. 7, page 430, in referring to the role of the amicus, states:

> "He must take the case as he finds it, with the issues made by the parties."

See also *United States v. F. M. Jabara & Bros.*, 19 C.C.P.A. 76, cert. denied, 284 U.S. 623 (1931). In *Knetsch v. United States*, 364 U.S. 361, 370 (1960), this Court refused to consider an argument made by an amicus but not theretofore advanced by the litigants.

We respectfully submit that California, et al should not be allowed to assume control of this case and to change radically the issues framed by the litigants and purportedly resolved by the state courts.

8/ California, et al cite **Iowa v. Rood,** 187 U.S. 87 (1902) as authority for the

proposition that the assertion by the State of title to water bottoms under the admitting statute did not present a federal question for the purpose of establishing the jurisdiction of this Court. In that case Iowa had intervened in a lawsuit between private claimants in which the plaintiff asserted title under the remote origin of the Act of Congress of September 28, 1850, the so called "swamp-land grant" to Iowa, the plaintiff having proved a conveyance to the State under said Act and a chain of title from the State into himself. The defendant claimed under the homestead and preemption laws, and in so doing asserted that the lands were not in fact swamp and overlfowed on September 28, 1850. The plaintiff prevailed in State Court, and Iowa (intervenor) requested this Court to accept jurisdiction because of its claim of title to a purportedly navigable water bottom under the admitting statute. In dismissing the writ of error, this Court noted that Iowa's Attorney General had originally claimed on the merits that the State's title did **not** depend upon any Act of Congress or any grant from the United States, and then attempted to assert title under such grant for the purpose of establishing the jurisdiction of the U.S. Supreme Court, this Court noting that Iowa was attempting "to blow hot and cold upon the same question" (187 U.S. at p. 92). The Court also indicated that the assertion of a claim under the Act of Congress is not sufficient to establish this Court's appellate jurisdiction "unless there be at least a plausible soundess for such claim." We surmise from the decision that this Court thought very little of Iowa's claim on the merits, perhaps due to the fact that the plaintiffs' chain of title included a conveyance by the State, or perhaps due to the fact that its Attorney Genral had argued both that the State **did** and then **did not** claim under a statute of the United States, or perhaps because the controversy was decided by the Supreme Court of Iowa without referring to the admitting statute (or to the treaty provisions or constitutional provisions also purportedly relied upon by Iowa). If these explanations as to the true basis for the decision are not persuasive, and we submit respectfully that they are, then we must regard any suggestion in **Iowa** that a claim of title **directly** under an Act of Congress (and requiring its interpretation) does not present a federal question, to be in conflict with other clear, and later, expressions of this Court, including those in **United States v. Utah,** 283 U.S. 64, 75 (1930), **United States v. Oregon,** 295 U.S. 1, 14 (1934), and **Utah v. United States,** 403 U.S. 9, 10 (1971), and of course in **Bonelli** itself.

II.

BONELLI DOES NOT SUGGEST THAT THE WATER BOTTOM TITLES OF THE ORIGINAL THIRTEEN STATES ARE GREATER THAN OR LESS THAN, OR VARY IN ANY WAY FROM, THE WATER BOTTOM TITLES OF THE LATER THIRTY-SEVEN STATES

California, et al suggest [9/] that *Bonelli* purports to establish a water bottom title in the later thirty-seven states which is inferior in some way to the water bottom title of the original thirteen. Absolutely nothing in the majority decision in *Bonelli* suggests this result. California, et al in advancing this principle, purport to rely on the dissenting opinion of Mr. Justice Stewart in *Bonelli.* The dissenting Justice suggests that the original thirteen are "free to develop and apply their own rules of property law" to lands emerged above the waters of a river, while the later thirty-seven must "knuckle under" to the federal common law, but we respectfully submit that this appears to be a statement of what the dissenting Justice fears might be the result if the principles of *Bonelli* are allowed to run rampant beyond what we respectfully submit are their obvious limitations.

Nothing in the majority decision in *Bonelli* suggests that there exists one set of rules for determining the ownership of water bottoms or emerged lands in the original thirteen and another set of rules for the later thirty-seven; nor can there be so much as one variation in the rules of ownership applicable to the respective states. There can be no difference in result in a title controversy as to water bottoms or emerged lands, regardless of the state in which the

9/ See Footnote 2, page 4, of brief of California, et al.

controversy exists. The equal footing doctrine can mean nothing more than, and nothing less than, that the water bottom title received by a new state reaches as far as, but no further than, the water bottom title reserved by the original thirteen, and is subject to the same restrictions and limitations, including conditions of defeasance, as the reserved title of the original thirteen. [10/] The only difference would be not in the result or the resolution of the controversy, but only that in the original thirteen the federal question therein presented would arise under the United States Constitution, whereas the same controversy in one of the later thirty-seven would arise under the admitting statute. And this distinction, which is wholly unimportant to the resolution of the merits of a title controversy, is due to the fact that the original thirteen "reserved" their water bottom titles in ratifying the Constitution, whereas the later thirty-seven were "granted" their titles by virtue of the equal footing doctrine expressly included in the admitting statutes.

10/ See discussion in **United States v. Texas,** 339 U.S. 707, 716, 717 (1949), including the clear statement that the equal footing clause has a **direct effect** on certain property rights, not merely political and sovereignty matters, contrary to the argument of California, et al (Brief of California, et al, pp. 14-18).

III.

THE CONVEYANCE OF NAVIGABLE WATER BOTTOMS BY THE UNITED STATES TO A STATE IS A "GRANT" WHICH MUST BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE UNITED STATES

California, et al apparently deny that the conveyance of navigable water bottoms is a "grant" which must be construed in accordance with federal law. [11/] They correctly point out, however, that *Bonelli* [12/] does refer to the states' acquisition of water bottoms as "the original *grant* to the States" (emphasis supplied). Earlier in the same opinion, [13/] this Court discussed the passing of title to the states as follows:

> "Accordingly, title to lands beneath navigable waters passed from the Federal Government to the new States, upon their admission to the Union, under the equal-footing doctrine. See, e.g., Pollard's Lessee v. Hagan, 3 How 212, 11 L.Ed. 565 (1845); Shively v. Bowlby, 152 US 1, 38 L.Ed. 331, 14 S Ct 548 (1894); Weber v. Board of Harbor Comm'rs., 18 Wall 57, 65-66, 21 L.Ed. 798 (1873)."

The Federal courts have uniformly recognized the states' title to water bottoms as having "passed" to the states from the United States upon the entry of each new state into the union; see *United States v. Oregon,* 295 U.S. 1, 14 (1934); *United States v. Utah,* 283 U.S. 64, 75 (1930); *United States v. Washington,* 9th Cir., 294 F. 2d 830, 834 (1961); and *Organized Village of Kake v. Eagan,* D.C. Alaska, 174 F. Supp. 500, 503 (1959). Certainly, during the pre-statehood period, title to the water bottoms must have vested in some entity, and of course that entity could only have been the

11/ Brief of California, et al, p. 19
12/ 414 U.S. 323
13/ 414 U.S. 318

United States, despite some decisions by state courts to the effect that the United States "never had any title to" these navigable water botoms. [14/]

But California, et al apparently admit that the water bottoms "passed" from the United States to each new state, but somehow, by strained reasoning, have convinced themselves that this "passing" of title is not a "grant" or "granting" of title. And they do so, not because they are led to that conclusion by logic, but rather because they imagine that, if they reach that conclusion, the "transfer" of title need not be governed by federal law.

Shively v. Bowlby, 152 U.S. 1 (1894) and *United States v. Holt State Bank,* 270 U.S. 49 (1945) hold squarely that during the pre-statehood period the United States had the authority, occasionally exercised, to convey navigable waterbottoms to third parties, that is, parties other than the state not yet formed; see also *United States v. Winans,* 198 U.S. 371 (1905); *Prosser v. Northern Pacific Railway Company,* 152 U.S. 59 (1894), and *Brewer-Elliott Oil and Gas Co. v. United States,* 8th Cir., 270 F. 100, 108 (1920). Further, *Choctaw Nation v. Oklahoma,* 397 U.S. 620 (1970) upheld a conveyance by the United States to the Choctaw and Cherokee Nations of a part of the bed of a navigable river within the borders of the subsequently formed State of Oklahoma.

We fail to see any reason, and California, et al have offered none, as to why the acquisition by a sovereign state of title to water bottoms at the inception of such state's existence, is anything other than a "grant" of such navigable water bottoms by the national sovereign, well within the rule that grants of land by the national sovereign must be construed and governed by national law. And this designation as a "grant" is underscored by the fact that the

14/ **State v. Bozeman,** 156 La. 635, 101 So. 4, 6 (1924); **State v. Capdeville,** 146 La. 94, 83 So. 421, 425 (1919).

national sovereign admittedly had the right to convey such water bottoms to other parties during the pre-statehood period. Certainly matters of interpretation with respect to these "grants" (or "transfers" as California, et al would so delicately designate them) should not be left to the varying interpretations of fifty separate judicial systems; see *United States v. Oregon,* supra, and *United States v. Utah,* supra.

IV.

THE FEDERAL COMMON LAW RELATING TO WATER BOTTOMS AND EMERGED LANDS WAS NOT CREATED BY BONELLI, BUT RATHER HAS ANCIENT ORIGINS IN THE JURISPRUDENCE OF THIS COURT

California, et al suggest in their brief that the principles of the federal common law, with respect to water bottoms and lands which emerge from navigable waters, are matters of recent origin, that only *Bonelli* announces these principles, and that *Bonelli* itself should be treated as a solitary intrusion into an area of the law long avoided by this Court. [15/] Nothing could be more inaccurate. *Bonelli*

15/ In an effort to show that this Court has recognized the principle that title to land acquired by accretion was acquired under the law of the State, not the United States, California, et al have cited **St. Louis v. Rutz,** 138 U.S. 226 (1891) and **Barney v. Keokuk,** 94 U.S. 324 (1876). In **St. Louis,** the City of St. Louis, as the owner of an island (located in the State of Missouri) in the Mississippi River, was attempting to establish title to accretion (located in Illinois) as against another private landowner who, under the law of Illinois, owned that part of the bed of the Mississippi River on which the accretion was located. There was no attempt by a sovereign state to prevent emerged lands from passing into private ownership.

Actually, the decision in **Barney,** 94 U.S. at p. 337, contains the following language:

"It is generally conceded that the riparian title attaches to subsequent accretions to the land effected by the gradual and

did not create the federal common law with respect to the matters adjudged therein; it merely reiterated principles upon which this Court has relied at least as far back as 1856. In *Jones, et al v. Johnson.* 18 How. 150, 156 (1856), this Court announced the following principle:

> "Land gained from the sea either by alluvion or dereliction, if the same be by little and little, by small and imperceptible degrees, belongs to the owner of the land adjoining. 2 Bl. Com. 261, 262."

In *Banks v. Ogden,* 2 Wall. 57, 67 (1865), the Federal rule was stated as follows:

> "The rule governing additions made to land bounded by a river, lake or sea, has been much discussed and variously settled by usage and by positive law. Almost all jurists and legislators, however, both ancient and modern, have agreed that the owner of the land thus bounded, is entitled to these additions."

Similarly, in *County of St. Clair v. Lovingston,* 23 Wall. 46, 68, 69 (1874), this Court stated as follows:

> *"Blackstone thus lays down the rule of the common law:*
>
> 'And as to lands gained from the sea, either by alluvion, by the washing up of land and earth, so as in

---

imperceptible operation of natural causes. But whether it attaches to land reclaimed by artificial means from the bed of the river, or to sudden accretions produced by unusual floods, is a question which each State decides for itself",

suggesting that again in this instance this Court would require that accretions vest in the riparian owner if same be formed gradually and imperceptibly and by natural causes, and would allow State law to determine the ownership **only** of accretions formed by artificial means or by "unusual floods". This is precisely the opposite of the proposition for which the case is cited by California, et al.

> time to make terra firma, or by dereliction, as when the sea shrinks below the usual water marks; in these cases the law is held to be that if the gain be by little and little, by small and imperceptible degrees, it shall go to the owner of the land adjoining. For de minimis non curat lex; and besides, these owners being often losers by the breaking in of the sea, or at charges to keep it out, this possible gain is, therefore, a reciprocal consideration for such possible charge or loss. But if the alluvion be sudden or considerable, in this case it belongs to the King; for, as the King is lord of the sea, and so owner of the soil while it is covered with water, it is but reasonable he should have the soil when the water has left it dry.' 2 Com., 262; see, also, Woolrych, L. Waters, 34; and Shultes, Aquatic Rights, 116.

Blackstone takes his definition from Bracton, lib. 2, ch. 2. Bracton was a judge in the reign of Henry III., and the greatest authority of his time. Hale, in his De Jure Maris, says Bracton followed the civil law. Hale himself shows the great antiquity of the rule in the English law. De Jure Maris, 1st pt. ch. 6; see, also, King v. Yarborough, 1 Dow. & C. App. Cas. 178.

Chancellor Kent, the American commentator, recognizes the rule as it is laid down by the English authorities referred to. 3 Kent, Com., 428.

By the American Revolution the people of each State, in their sovereign character, acquired the absolute right to all their navigable waters and the soil under them. Martin v. Waddell, 16 Pet. 367; Russell v. Jersey Co. 15 How., 426. The shores of navigable waters and the soil under them were not granted by the Constitution to the United States, but were reserved to the States respectively. And new States have the same rights of sovereignty and jurisdiction over this subject as the original ones. Pollard v. Hagan, 3 How. 212;

Goodtitle v. Kibbe, 9 How. 471; Hallett v. Beebe, 13 How. 25; Withers v. Buckley, 20 How. 84; 15 L. ed. 816.

The question here under consideration is not a new one in this court. In New Orleans v. U.S. 10 Pet. 662, it was said: 'The question is well settled *at common law* that the person whose land is bounded by a stream of water which changes its course gradually by alluvial formations, shall still hold the same boundary, including the accumulated soil. No other rule can be applied on just principles. Every proprietor whose land is thus bounded is subject to loss by the same means which may add to his territory, and as he is without remedy for his loss in this way he cannot be held accountable for his gain.'

To the same effect are Saulet v. Shepherd, 4 Wall. 502, 18 L. ed. 442, and Schools v. Risley, 10 Wall., 110, 19 L. ed., 856.

In the light of the authorities, alluvion may be defined as an addition to riparian land, gradually and imperceptibly made by the water to which the land is contiguous. It is different from reliction, and is the opposite of avulsion. The test as to what is gradual and imperceptible in the sense of the rule is, that though the witnesses may see from time to time that progress has been made, they could not perceive it while the process was going on. Whether it is the effect of natural or artificial causes makes no difference. The result as to the ownership in either case is the same. *The riparian right to future alluvion is a vested right. It is an inherent and essential attribute of the original property. The title to the increment rests in the law of nature. It is the same with that of the owner of a tree to its fruits, and of the owner of flocks and herds to their natural increase. The right is a natural, not a civil one.* The maxim 'Qui sentit onus debet sentire commodum'

lies at its foundation. The owner takes the chances of injury and of benefit arising from the situation of the property. If there be a gradual loss, he must bear it; if a gradual gain, it is his. The principle applies alike to streams that do, and to those that do not overflow their banks, and where dikes and other defenses are, and where they are not necessary to keep the water within its proper limits. 3 Wash. R. Prop. 48; Munic. No. 2 v. Orleans Cotton Press, 18 La. 122.'' (Emphasis Supplied) [14/]

And in *Hughes v. Washington,* 389 U.S. 290 (1967), the Supreme Court in applying the rule to accretion formed by the Pacific Ocean stated as follows:

''This brings us to the question of what the federal rule is. The State has not attempted to argue that federal law gives its title to these accretions, and it seems clear to us that it could not. A long and unbroken line of decisions of this Court establishes that the grantee of land bounded by a navigable water acquires a right to any natural and gradual accretion formed along the shore. In Jones v. Johnston, 18 How. 150, 15 L. ed. 320 (1856), a dispute between two parties owning land along Lake Michigan over the ownership of soil that had gradually been deposited along the shore, this Court held that '(l)and gained from the sea either by alluvion or dereliction, if the same be by little and little, by small and imperceptible degrees, belongs to the owner of the land adjoining.' 18 How, at 156, 15 L ed at 323. The Court has repeatedly reaffirmed this

14/ The recognition of the vested right of a riparian owner to future alluvion is most interesting. Of course, the riparian owner cannot be deprived of a vested property right without due process and just compensation. This in itself is a sufficient basis for the continuing applicability of the principles of the federal common law. The ''vested right'' to future alluvion is also expressly recognized in **Bonelli,** 414 U.S. at p. 326.

rule, County of St. Clair v. Lovingston, 23 Wall. 46, 23 L ed 59 (1874); Jefferis v. East Omaha Land Co., 134 US 178, 33 L ed 872, 10 S Ct 518 (1890), and the soundness of the principle is scarecely open to question.''

Therefore, this Court's statement of the federal common law in *Bonelli,* 414 U.S. at p. 325, was not a departure from the earlier decisions of this Court, nor was it a new pronouncement of law, but merely an adherence to time honored principles, as follows:

> ''Federal law recognizes the doctrine of accretion whereby the 'grantee of land bounded by a body of navigable water acquires a right to any ... gradual accretion formed along the shore.' Hughes v. Washington, 389 US 290, 293, 19 L Ed 2d 530, 88 S Ct 438 (1967); accord, Jones v. Johnston, 18 How 150, 156, 15 L Ed 320 (1856). When there is a gradual and imperceptible accumulation of land on a navigable riverbank, by way of alluvion or reliction, the riparian owner is the beneficiary of title to the surfaced land.''

The argument of California, et al that there is no reason for, or that there should not be, a Federal common law in this area, fails to touch the point. The plain fact is that there *is*, and has been for more than a century, a Federal common law with respect to the titles of navigable water bottoms granted to the states and the lands which emerge therefrom. California, et al, although purportedly requesting only the reconsideration of *Bonelli,* actually ask for the overruling of more than a century of jurisprudence of this Court; the request should be denied.

CONCLUSION

Bonelli Cattle Company v. Arizona, 414 U.S. 313 (1973) correctly construed the equal footing doctrine and the Federal common law as being determinative of the rights of a sovereign state vis a vis a riparian landowner, with respect to navigable water bottoms and the lands which emerge above present high water. Clearly a federal question, for purposes of the appellate jurisdiction of this honorable Court, did exist in *Bonelli,* and the writ of certiorari was properly granted therein. Similarly, the instant case presents a federal question inasmuch as it requires the interpretation of the equal footing doctrine in accordance with the issues as framed by the actual litigants herein and purportedly resolved by the State courts. Accordingly, we respectfully urge this Court to refrain from any departure from the principles of law set forth in *Bonelli* and to maintain its jurisdiction over the instant proceedings.

Respectfully submitted,

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CERTIFICATE

I hereby certify that three copies of the foregoing Brief of Amici Curiae have been served on each party separately represented in these proceedings, to wit: The State of Oregon, by mailing same to its counsel of record, Peter S. Herman, Esq., at his address, 100 State Office Building, Salem, Oregon 97310, and Corvallis Sand and Gravel Company, by mailing same to its counsel of record, Robert Mix, Esq., at his address 745 NW Van Buren, Corvallis, Oregon 97330, each such service having been made by depositing same in a U.S. Mail Box, with first class postage prepaid, addressed as aforesaid.

September 7, 1976.

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